

**\*\*NOT FOR PUBLICATION\*\***

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**HARRIS LEE WINNS,**  
Plaintiff,

v.

**EXELA ENTERPRISE SOLUTIONS, INC.**  
Defendant.

Case No. 4:20-cv-06762-YGR

**ORDER DENYING MOTION FOR RELIEF  
FROM NONDISPOSITIVE PRETRIAL ORDER  
OF MAGISTRATE JUDGE**

Dkt. No. 83

Before the Court is the Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge filed by *pro se* plaintiff Harris Winns. (Dkt. No. 83.) Pursuant to Federal Rule of Civil Procedure 72 and Civil Local Rule 72-2, plaintiff challenges Magistrate Judge Beeler's order extending the fact discovery cutoff and ordering plaintiff to complete his deposition within 30 days. Having carefully reviewed the parties' submissions and the record in this case, the Court **DENIES** plaintiff's motion for the reasons stated herein.

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Plaintiff has identified the proper legal standard for reviewing a nondispositive order. This standard is not easily satisfied because it affords the magistrate judge significant deference. *United States v. Abonce-Barrera*, 257 F.3d 959, 969 (9th Cir. 2001) ("[T]he text of the Magistrates Act suggests that the magistrate judge's decision in such nondispositive matters is entitled to great deference by the district court."). Indeed, "the reviewing court may not simply substitute its judgment for that of the deciding court." *Grimes v. City & Cnty. of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991). The district court may only set aside those factual determinations if it is left with a "definite and firm conviction that a mistake has been committed." *Perry v. Schwarzenegger*, 268 F.R.D. 344, 348 (N.D. Cal. 2010); *see also Wolpin v. Philip Morris Inc.*, 189 F.R.D. 418, 422 (C.D. Cal. 1999); *Burdick v. Commissioner*, 979 F.2d 1369, 1370 (9th

1 Cir. 1992).

2 As a threshold issue, motions for relief from nondispositive pretrial orders may not exceed  
3 five pages. Plaintiff's motion includes seven pages of text. This Court may strike motions that  
4 violate the local rules, standing orders, and general orders of the Court. Plaintiff is warned that he  
5 must comply going forward.

6 Plaintiff's contention that this Court's discovery referral was improper is foreclosed by  
7 statute. *See* 28 U.S.C. § 636((b)(1)(A) ("[A] judge may designate a magistrate judge to hear and  
8 determine any pretrial matter pending before the court[.]"). Discovery disputes are pretrial  
9 matters.

10 Magistrate Judge Beeler's short extension of the fact discovery cutoff was proper. "A  
11 schedule may be modified only for good cause and with the judge's consent.: Fed. R. Civ. P.  
12 16(b)(4). The district court "is given broad discretion in supervising the pretrial phase of  
13 litigation, and its decisions regarding the preclusive effect of a pretrial order . . . will not be  
14 disturbed unless they evidence a clear abuse of discretion." *C.F. Capistrano Unified Sch. Dist.*,  
15 654 F.3d 975, 984 (9th Cir. 2011) (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,  
16 607 (9th Cir. 1992) (omission in original) (internal quotation marks omitted)). "[T]he focus of the  
17 inquiry is upon the moving party's reasons for seeking modification." *Johnson*, 975 F.2d at 609.  
18 Defendant sought a modification due to plaintiff's refusal to cooperate with deposition scheduling.  
19 This establishes good cause. *Cf. C.F. Capistrano Unified Sch. Dist.*, 654 F.3d at 984 (affirming  
20 modification where there was no bad faith or dilatory purpose motivating request).

21 Requiring plaintiff to sit for his deposition is proper. Pursuant to Federal Rule of Civil  
22 Procedure 30(a) "[a] party may, by oral questions, depose any person, ***including a party***, without  
23 leave of court except as provided in Rule 30(a)(2)." (emphasis supplied).

24 **Plaintiff is warned that failure to comply with discovery obligations and court orders**  
25 **could result in sanctions, including a dismissal of plaintiff's case.** *See also Lowry v. Metro Bd.*  
26 *MTBS*, Nos. 09cv00882, 09cv00898 BTM (WVG), 2013 U.S. Dist. LEXIS 110744, at \*5-6 (S.D.  
27 Cal. Aug. 5, 2013) (dismissing case where plaintiff "refused to cooperate with Defendants'  
28 attempts to conduct discovery, and otherwise has made it next to impossible for Defendants to

garner information about Plaintiff's case").


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Based on the foregoing, the Court concludes that Judge Beeler's pretrial order is not clearly erroneous and therefore **DENIES** the motion for relief therefrom. Plaintiff is **ORDERED** to sit for his deposition.

This Order terminates Docket Number 83.

**IT IS SO ORDERED.**

Dated: November 4, 2021

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE

United States District Court  
Northern District of California